

4-206. Summons.

[For use with District Court Civil Rule No. 1-004 NMRA]

SUMMONS	
STATE OF NEW MEXICO COUNTY OF RIO ARriba FIRST JUDICIAL DISTRICT COURT Court Address: P.O. Box 2268 225 Montezuma Avenue Santa Fe, New Mexico 87504/87501 Court Telephone Number: 505-455-8250	Case No. D-117-CV-2014-00278 Judge: The Hon. Sheri A. Raphaelson
Plaintiff: Angelo Jacques v. Defendant: Northern New Mexico College	Defendant Name: Northern New Mexico College Address: 921 N. Paseo de Oñate Española, New Mexico 87532

TO THE ABOVE-NAMED DEFENDANT: Take notice that

1. A lawsuit has been filed against you. A copy of the lawsuit is attached. The Court issued this summons.
2. You must respond to this lawsuit in writing. You must file your written response with the Court no later than thirty (30) days from the date you are served with this Summons. (The date you are considered served with the Summons is determined by Rule 1-004 NMRA.) The Court's address is listed above.
3. You must file (in person or by mail) your written response with the Court. When you file your response, you must give or mail a copy to the person who signed the lawsuit.
4. If you do not respond in writing, the Court may enter judgment against you as requested in the lawsuit.
5. You are entitled to a jury trial in most types of lawsuits. To ask for a jury trial, you must request one in writing and pay a jury fee.
6. If you need an interpreter, you must ask for one in writing.
7. You may wish to consult a lawyer. You may contact the State Bar of New Mexico for help finding a lawyer at www.nmbar.org; 1-800-876-6657, or 1-505-797-6066.

Dated at: Rio Arriba, New Mexico, this 7th day of August, 2014.



STEPHEN T. PACHECO
CLERK OF THE DISTRICT COURT

BY:

[Signature]
Deputy

/s/ DANIEL YOHALEM
DANIEL YOHALEM
1121 Paseo de Peralta
Santa Fe, New Mexico 87501
Voice: 505-989-9433
Facsimile: 505-989-4844
dyohalem@aol.com

Attorney for Plaintiff

RETURN¹

[] to _____ (name of person), _____, (title of person authorized to receive service. Use this alternative when the defendant is a corporation or

an association subject to a suit under a common name, a land grant board of trustees, the State of New Mexico or any political subdivision).

Fees: _____

Signature of person making service

Title (if any)

Subscribed and sworn to before me this _____ day of _____, _____²

Judge, notary or other officer authorized
to administer oaths

Official title

USE NOTE

1. Unless otherwise ordered by the court, this return is not to be filed with the court prior to service of the summons and complaint on the defendant.

2. If service is made by the sheriff or a deputy sheriff of a New Mexico county, the signature of the sheriff or deputy sheriff need not be notarized.

[Adopted effective August 1, 1988; as amended by Supreme Court Order No. 05-8300-001, effective March 1, 2005; by Supreme Court Order No. 07-8300-016, effective August 1, 2007; as amended by Supreme Court Order No. 12-8300-026, effective for all cases filed or pending on or after January 7, 2013; as amended by Supreme Court Order No. 13-8300-022, effective for all cases pending or filed on or after December 31, 2013.]

Joan Chernock

**STATE OF NEW MEXICO
COUNTY OF RIO ARriba
FIRST JUDICIAL DISTRICT**

NO. D-117-CV-2014-00278

ANGELO JACQUES,

Plaintiff,

v.

Demand for 6-Person Jury

NORTHERN NEW MEXICO COLLEGE,

Defendant.

**COMPLAINT FOR DAMAGES UNDER THE NEW MEXICO
WHISTLEBLOWER PROTECTION ACT**

I. Introduction

1. This case arises out of the effort of Defendant's high ranking administrators to punish and discredit Plaintiff and deprive him of employment because Plaintiff repeatedly communicated to these Northern New Mexico College ("NNMC") officials and other public officials his concerns about the rampant mismanagement, improper employment actions, favoritism, and misuse of public funds and equipment he discovered while working as the IT Director for the college. Plaintiff reasonably and in good faith believed that the acts and failures to act by NNMC administrative officials which were the subject of repeated communications to his public employer and/or to New Mexico Senator Richard Martinez were unlawful and/or improper. Plaintiff further contends that Defendant acted to punish and discredit him because Plaintiff objected to and/or refused to participate in activities or practices at NNMC that constituted an

unlawful or improper act.

2. In fact, Defendant's refusal to provide the reasons for placing Plaintiff on administrative leave and for its decision not to re-employ him were part of a pattern and practice of punitive actions taken by the high-ranking administrative officials of NNMC to silence criticism of their misconduct and to punish those who questioned their improper conduct.

3. Plaintiff was without employment for approximately eight months as a result of Defendant's conduct and has suffered a significant loss of income even after finding employment. Additionally, Plaintiff suffered severe humiliation, embarrassment and emotional distress as a direct result of the conduct of Defendant.

II. Parties and Jurisdiction

4. Plaintiff Angelo Jacques is a resident of Rio Arriba County and at all times material hereto was employed at Defendant Northern New Mexico College as the Information Technology ("IT") Director.

5. Defendant Northern New Mexico College is a public employer within the meaning of the New Mexico Whistleblower Protection Act, 1978 NMSA, §10-16C-2(C). At all times material hereto, the NNMC officers and employees mentioned in this Complaint were acting within the scope of their duties. The NNMC is liable for the retaliatory actions undertaken by its employees as explained below.

6. This is an action for money damages brought pursuant to the New Mexico Whistleblower Protection Act, 1978 NMSA, §10-16C-1, *et seq.* This Court has jurisdiction over this case pursuant to 1978 NMSA, §10-16C-4 and venue is proper in this District because all parties reside or do business in this District and all acts

described in this Complaint occurred in this District.

III. The Facts Regarding Plaintiff's Qualifications For The Job

7. After graduating from Española Valley High School in 1978, Plaintiff joined the United States Navy where he served for 20 years and retired with an honorable discharge as a Chief Petty Officer. During his service, the Navy sent Plaintiff to numerous schools where he received advanced training in computer technology. Plaintiff also received a Bachelor of Science degree as part of this process. After leaving the United States Navy in 2000, Plaintiff spent the next 12 years working for several private sector companies. *Inter alia*, Plaintiff worked as a Senior Program Consultant at the Los Alamos National Laboratory and as the Technical Delivery Projects Manager at the White Sands Missile Range. In 2007, Plaintiff accepted an offer to work for Globecomm Systems, Inc. in New York City. Plaintiff was assigned to serve as a Senior Program Manager for the United States Department of Commerce Emergency Weather Alert. Plaintiff also served as a Senior Program Manager for the United States Department of Justice where, *inter alia*, he was responsible for implementing a nationwide communications system. Plaintiff then spent three years in Afghanistan where he installed and/or implemented numerous critical communications projects for the nation of Afghanistan and for the United States in support of our troops deployed in the region. This position was a Top Secret position reporting to the Information Management Officer of the Department of State in Kabul, Afghanistan. An additional assignment was as the Acting Director of Operations for Afghanistan Telecommunications.

8. By 2012, Plaintiff was anxious to return home to the Española Valley. He

wanted to be near his aging parents. Now in possession of considerable expertise in technology, he wanted to give something back to the community where he was raised. A relative informed Plaintiff of an opening for the position of Director of IT at Northern New Mexico College. Plaintiff applied for the job. His qualifications for the position probably exceeded those of anyone NNMC had previously employed. On or about September 25, 2012, Plaintiff was offered the job at a salary of \$95,000 per year. Although this was less than half of what he had earned with Globecomm Systems, Inc., Plaintiff was eager to come home and accepted the job offer.

9. At the time Plaintiff began his employment at NNMC his immediate supervisor was Domingo Sanchez, Vice-President of Finance and Administration. Ricky Serna was employed as the Vice-President of Institutional Advancement. Henrietta Trujillo was the Finance Director. Bernie Padilla was the Director of Human Resources. Unbeknownst to Plaintiff, at the time he began his employment, NNMC was deeply in debt and suffering from gross mismanagement, including financial mismanagement, as a result of the acts and omissions of the above-named individuals and others employed at the College during the previous school years.

10. In fact, the New Mexico State Auditor's Office found that during 2012:

- the College lacked adequate internal financial controls and protections against irregularities;
- the College's internal financial controls were so deficient that errors and irregularities could go undetected;
- financial data was not secure;
- there was an improper failure to segregate certain financial duties that

increased the risk of misappropriation of assets through error or fraud;

- there was a lack of control over inventory; that this lack of control over inventory made it difficult to determine which assets had been purchased with federal funds, thus putting the College into non-compliance with Federal rules; and
- the College had overspent its budget.

The 2012 Audit results were not published until long after Plaintiff had accepted the job offer and had begun work.

IV. The Facts Regarding (A) Plaintiff's Communications to NNMC Regarding the Administration's Actions and Failures to Act that Plaintiff Believed Constituted Improper or Unlawful Conduct, and (B) Plaintiff's Objection and/or Refusal to Participate in Activities or Practices that Constituted Improper or Unlawful Acts

11. During November 2012, Plaintiff provided Mr. Sanchez with a preliminary assessment of the state of the technology infrastructure. Plaintiff informed him there had been serious mismanagement of the NNMC technology infrastructure. He informed Mr. Sanchez there was no control of data integrity and that NNMC was completely lacking in inventory control. This was a problem later found in an audit conducted by the State Auditor's Office.

12. Plaintiff further found that the NNMC administrators were using equipment that had been purchased for the students through certain Federal Grant Funds. Federal grants require that the recipient must be able to demonstrate that the money received was used for the specific purposes of the grant. NNMC had obtained over \$5,000,000 of technology equipment through federal grants and much, if not most, of it could not be accounted for. Mr. Serna was responsible for managing the federal grants and Finance

Director Henrietta Trujillo, a close associate of Mr. Sanchez, was responsible for tracking how grants were used.

13. Plaintiff also told Mr. Sanchez that the lack of security of data was another critical matter. There was no protection of Social Security numbers, credit card information, personal information of students and employees, etc. Mr. Sanchez acknowledged the problems with the lack of control of data integrity and the lack of inventory control during his meeting with Plaintiff in November 2012. Mr. Sanchez's response, however, was to tell Plaintiff not to deal with these problems yet.

14. During December 2012, Plaintiff began evaluating NNMC's existing IT service contracts. He found that virtually all the service contracts had been unilaterally and improperly approved by Ms. Trujillo. Plaintiff found there had been no technical guidance or recommendations regarding these contracts. He found that Ms. Trujillo had authorized the service contracts without a statement of work setting out what the vendors were to do, a standard practice before committing to such a contract. Plaintiff concluded NNMC was wasting over \$4,000 per month by its improper failure to have reviewed the various service contracts that Ms. Trujillo had approved. He found evidence of violations of the state procurement code in regard to some of these contracts.

15. *Inter alia*, Plaintiff found that Ms. Trujillo had procured the Point of Sale System without following the state procurement code. After requesting price quotations from vendors, Ms. Trujillo had then selected the most expensive quote. Moreover, the equipment she purchased far exceeded the need of the small cafeteria where it was to be used. Ms. Trujillo had decided to pay \$8,500 rather than accept a quote of \$3,500

for a more appropriate system. Furthermore, NNMC was supposed to pay the vendor an additional \$1,800 to have the system she purchased configured.

16. Plaintiff informed Mr. Sanchez of his findings described in the prior two paragraphs and stated that NNMC needed to take action. Mr. Sanchez was not interested. He attempted to steer Plaintiff away from addressing the potential illegality by stating: "the whole place is like that." Mr. Sanchez abruptly ended the conversation when Plaintiff brought up the improper conduct of Ms. Trujillo in the Point of Sale affair.

17. Plaintiff spoke with Mr. Padilla about the fact that NNMC had chosen to pay \$8,500 rather than accept a quote for a more appropriate system that was only \$3,500. Plaintiff asked Mr. Padilla why this had been done. Mr. Padilla stated that Ms. Trujillo was "under suspicion" for what he termed "movidas" that she may have done with the prior purchasing agent, Linda Atencio, in order to allow Ms. Atencio's son to receive the costlier contract.

18. Mr. Sanchez and Mr. Padilla refused to take any action regarding the acts of gross mismanagement and possible unlawful conduct of Ms. Trujillo. Instead, Mr. Sanchez instructed Plaintiff to purchase a new, different system.

19. Around December 2012, Mr. Padilla asked Plaintiff to hire his son for a work-study position. Most, if not all, the money for work-study positions came from a federal grant. Normally, advertisements for these positions were posted in the Financial Aid Office and there was an interview process for interested students. Plaintiff asked Mr. Padilla to show him the procedure he was to follow in regards to work-study hiring and stated he would be happy to interview Mr. Padilla's son for such a position. Mr. Padilla responded that his son did not need to be interviewed. He told Plaintiff this was how

things were handled at NNMC. Plaintiff expressed his concern and asked to see the policy that authorized this process. Mr. Padilla told Plaintiff the matter had been taken care of. Mr. Padilla's son subsequently showed up at Plaintiff's office as a work-study employee.

20. During this same time period, Plaintiff began working with Dr. Steve Martinez, the Dean of College Services, in an effort to come up with new ideas that would generate additional funding for NNMC and improve the educational opportunities for its students. Mr. Sanchez told Plaintiff that it was in Plaintiff's best interest not to associate with Dr. Martinez and told Plaintiff to cease working with Dr. Martinez to obtain additional funding.

21. Around February 2013, Plaintiff had another conversation with Mr. Sanchez about the mismanagement of equipment. Plaintiff told Mr. Sanchez that equipment that had been obtained with federal grant money had not been properly segregated and was not being properly accounted. Instead of taking action to deal with this serious problem, Mr. Sanchez instructed Plaintiff not to deal with the issue.

22. Despite Mr. Sanchez's improper "order" not to associate with Dr. Martinez, Plaintiff continued to associate with him on developing a "dual credit" project to bring NNMC as much as \$1,000,000 from the United States Department of Agriculture. The project would enable students to receive college credit through "electronic classrooms." Cisco Systems Inc. was assisting Plaintiff and Dr. Martinez with a grant application. Dr. Martinez's role was to establish the required relationships with different high schools and Plaintiff's role was to get technology and connectivity to remote locations.

23. During March 2013, Mr. Serna saw Plaintiff talking with Dr. Martinez.

Within two hours Mr. Sanchez approached Plaintiff and again told him it was not in Plaintiff's "best interest" to associate with Dr. Martinez. Plaintiff explained that they were working on a plan that would generate additional revenue for NNMC and that the project was an area in which Dr. Martinez had expertise. Mr. Sanchez told Plaintiff to work on it without Dr. Martinez's assistance. Plaintiff told Mr. Sanchez that Dr. Martinez's expertise was needed in order to be successful in obtaining the funding for the College. Mr. Sanchez ended the discussion by stating: "Did you hear what I said?" NNMC subsequently lost the grant opportunity because the College did not have a viable dual credit program and Cisco Systems Inc. ceased its support.

24. Around March 2013, Plaintiff met with State Senator Richard Martinez in a crowded popular Espanola restaurant where he told Senator Martinez that he had concerns about the integrity of NNMC and the way they were mismanaging data and assets. Upon information and belief, Plaintiff alleges that Mr. Sanchez and/or Mr. Serna and/or Mr. Padilla learned that Plaintiff (and others) had met with Senator Martinez to discuss concerns about the alleged mismanagement of NNMC.

25. During the winter and early spring of 2013, information was appearing on social media that was critical of the management of NNMC. Around April 2013, Plaintiff was told by NNMC Provost Tony Sena that NNMC President Nancy ("Rusty") Barcelo was upset with the criticism. Mr. Sanchez and Mr. Padilla were concerned about the posting of the criticisms and wanted to know who was providing the information that was being posted and who was doing the posting. Plaintiff was instructed to use his technological skills to find out the identities of the persons who were involved with posting statements that were critical of the Administration. Specifically, Plaintiff was

asked to “snoop around” the computers of certain individuals. Plaintiff told Mr. Sena, Mr. Sanchez and other college administrators that he believed it was improper, unethical and possibly illegal to do this and further told them he would not cooperate in doing this. These persons were unhappy and dissatisfied with Plaintiff for not being willing to do this.

26. Around April 2013, Plaintiff spoke with Mr. Sanchez and told him about the tremendous amount of money that NNMC was wasting by paying for services that were not being delivered. Plaintiff informed Mr. Sanchez that he had renegotiated numerous service contracts and had been able to save the College over \$80,000 a year. Mr. Sanchez’s response was not a positive one. He wanted to know why Plaintiff had terminated service with Santa Fe Office Supply. Plaintiff told him that the contract with that company, negotiated by Ms. Trujillo, was a waste of public funds. Plaintiff told Mr. Sanchez the copy machines from Santa Fe Office Supply were over 12 years old and the maintenance contracts were costing more than it would cost to have new copy machines.

27. On or about the middle of April 2013, there was a malware attack on the website at the College. Plaintiff was able to isolate the issue but continued to realize that the firewall that was in place was not effective to protect the College website or its network. Plaintiff informed Mr. Sanchez of this and asked for funding to procure a contractor and rebuild the website with added security features. Plaintiff stated that state procurement procedures would allow the procurement under a method called a BAR, Budget Adjustment Request. Mr. Sanchez told Plaintiff to speak with Finance Director Henrietta Trujillo.

28. Plaintiff spoke with Ms. Trujillo, as instructed. Ms. Trujillo told him that the College had a low cashflow and was unable to pay vendors for any services until the budget was approved. Plaintiff told her that NNMC had received some appropriated funding during the recent legislative session (\$150,000) and this could provide the funds required for rebuilding the website and creating a new firewall. Ms. Trujillo told Plaintiff that she would discuss this with Mr. Sanchez.

29. Plaintiff did not hear back for a week and advised Mr. Sanchez again that this was an urgent matter. Mr. Sanchez stated that Ms. Trujillo would write a check for the contractors developing the website and the firewall. Plaintiff asked Mr. Sanchez where the funding had come from. Mr. Sanchez declined to answer, but stated "we were able to cover it." Concerned that NNMC may have taken the money from an improper source, Plaintiff told Mr. Sanchez of the comment Ms. Trujillo had made about cash flow. Mr. Sanchez told Plaintiff not to worry about it, that "we got it covered." The website redesign cost \$25,000 and the firewall with services cost approximately \$50,000.

30. Subsequently, Plaintiff conducted some research into the NNMC budget and learned that the funding for those two projects was improperly taken from a federal grant intended for other work. Plaintiff spoke first with Ms. Trujillo about this. She told him that he had not been asked to assist with the BAR, and Plaintiff pointed out that the budget line item from which the funds came was listed under "federal grants." Finance Director Trujillo told Plaintiff to speak with Mr. Sanchez about it and Plaintiff did so. Mr. Sanchez asked Plaintiff how he had obtained the information. Plaintiff told Mr. Sanchez that it was within his responsibility to ensure that expenditures were being

made from the right accounts. Plaintiff asked, in words to the effect: "Did you not assign me the responsibility to ensure that first it was an adequate solution and then to do a budget check." Mr. Sanchez admitted he had done so and then told Plaintiff just to be thankful for the procurement. As of this date, although the website redesign was paid for in full, the new, redesigned website was never put in place. In short, the payment for the redesign was a waste of public money.

31. On May 6, 2013, Plaintiff went to check on a virus infection on a computer in the Automotive Department. In conducting the check, Plaintiff saw the computer had been used to browse numerous pornography sites, including many that appeared to involve child pornography. Plaintiff knew that school computers were not to be used to browse for pornography and such use violated policy. He believed that the use of a state school computer to browse for child pornography was likely unlawful and that such misconduct was certainly a basis for termination. Plaintiff took possession of the computer, had it transferred to NNMC Security, and notified Mr. Padilla and Mr. Sanchez that same day of what he had discovered.

32. Mr. Padilla informed Plaintiff that management would notify Plaintiff and Security on how to proceed once a decision had been made and asked Plaintiff to tell them what he felt should be done. On May 7, 2013, Plaintiff told Sanchez and Padilla that he believed the matter needed to be acted on, that he felt it was his responsibility to report what he had discovered because it went beyond College policies, and that the person should be terminated once he was identified. Plaintiff asked Mr. Padilla to inform him what action was going to be taken.

33. Later that day, Plaintiff learned that NNMC had decided to take no

disciplinary action against the person using the NNMC computer for pornography, but would transfer the computer to the Española City Police. As of the date Plaintiff was terminated and to the current date, to Plaintiff's knowledge no disciplinary or other internal action was ever taken by NNMC against the offending individual.

34. During May 2013, Plaintiff again spoke with Mr. Sanchez about the procurement violations he had discovered, including the violations engaged in by Ms. Trujillo in regard to the purchase of the Point of Sale system that Mr. Padilla had previously termed a "movida." Mr. Sanchez again made it clear to Plaintiff that he did not want these potentially criminal matters pursued, stating: "That is the past. Forget about it." Plaintiff told Mr. Sanchez that he (Plaintiff) felt he had to act on this. Mr. Sanchez's demeanor and tone made it clear to Plaintiff that Mr. Sanchez was upset with Plaintiff's response to the command to forget about the possible violations of the state procurement code.

35. Around this same time, Mr. Padilla asked Plaintiff to hire his son as a temporary employee for the summer. The work-study position was about to end. Plaintiff told Mr. Padilla he did not have the funds to hire his son for the summer. Mr. Padilla told Plaintiff to talk to Mr. Sanchez. Plaintiff repeated that there were no funds to hire his son. Mr. Padilla again told Plaintiff to talk to Mr. Sanchez. Plaintiff told Mr. Padilla he would not do so. Mr. Padilla approached Plaintiff the following day and again asked him to hire his son and Plaintiff again told him there were no funds to do so.

36. The day after the work-study program ended, Plaintiff found Mr. Padilla's son sitting in his office. Plaintiff asked him how he was getting paid now that the work-

study program had ended. He told Plaintiff that he had been hired as a temporary employee for the summer. Plaintiff contacted Mr. Padilla and stated that he had not interviewed his son or any other candidate for the position, and that he had not signed any paperwork approving the hiring. Mr. Padilla told Plaintiff it was all taken care of. Plaintiff asked who had processed the paperwork required by NNMC policy and Mr. Padilla stated that he (Padilla) had taken care of it. Plaintiff responded that he was not prepared to accept an employee when policy had not been followed. Mr. Padilla stated: "I told you, I took care of it."

37. During the spring of 2013, Plaintiff began to investigate NNMC's procurement of Degree Works, a software package used to collect past and current student data for the purpose, *inter alia*, of assisting students in ascertaining the best path forward for completion of their degrees. The program had been purchased around 2010 from a vendor named Elucian with the use of three federal grants. The initial procurement cost was \$89,000 and was completed by the previous Registrar at the College, Jan Dawson, with the approval of the College Executive Team. This team had included Mr. Serna, Mr. Sanchez and NNMC President Rusty Barcelo.

38. Joe Martinez, the Database Administrator, had brought the Degree Works matter to Plaintiff's attention. Mr. Martinez had received repeated emails and calls from Elucian demanding payment of bills. Plaintiff then began to research NNMC's obligation to Elucian. Plaintiff spoke with Andrea Martinez, then the Grants Manager. She told Plaintiff she had stopped making payments to Elucian because the College was continuing to receive invoices that were in excess of the contracted amount.

39. Plaintiff learned that the College had purchased the system, had

negligently failed to take into account the additional fees that were required for the maintenance and operation of the Degree Works program, and lacked the funds to operate and maintain it. During May 2013, Plaintiff informed Mr. Serna that NNMC would have to come up with substantial funds in order to fully deploy the program in the manner it was supposed to be used. This included the hiring of a full time Database Administrator with an annual salary of \$50,000-65,000, plus benefits. This was another cost that the NNMC officials had negligently failed to figure into the price of the system at the time they decided to purchase Degree Works. Plaintiff also told Mr. Serna that if they did not launch the program, NNMC would be obligated to repay to the granting federal agencies the original purchase price, which, with various costs in addition to the procurement price, was over \$118,000. Plaintiff told Serna that NNMC might also be assessed a penalty for misuse of the federal grant. Mr. Serna responded in a hostile manner to the information from Plaintiff about the misfeasance that had occurred in the purchase of the program. He said he was well aware of the problem and, in a condescending manner, stated: "Don't you know I'm in charge of all grants in the College?"

40. Plaintiff told Mr. Sanchez about the financial problems NNMC was facing with Elucian and that he was getting calls and emails requesting payments for work done by Elucian on the Degree Works program that were above and beyond the purchase price. He explained that Elucian's collection efforts were getting more aggressive. Mr. Sanchez put Plaintiff off, stating he would look into the matter and then advise Plaintiff what the next step would be.

41. Plaintiff made it clear to Mr. Sanchez and/or Mr. Serna that he was

concerned about the mismanagement that had occurred in the procurement of this program that had resulted in the actual cost being tens of thousands of dollars more than the College had budgeted for the program. He made his findings clear to them -- that there had been no oversight of the original procurement and that there was inadequate accounting of the billing received after the initial purchase. Plaintiff told both Mr. Sanchez and Mr. Serna that the mismanagement that had allowed this to happen was unacceptable not only for the vendor but for the College. He repeated to both administrators that the program could not be launched without the required team in place, that the College had bought the program with federal grant money without having sufficient funds to implement it, and that there was a potential for federal penalties.

42. During May-June 2013, Plaintiff expressed to Mr. Sanchez his concerns with the lack of proper management and fiscal safeguards associated with the purchase of another system, the Blackboard software system. This system had been purchased by NNMC with state funds around 2010. NMCC had failed to pay a \$55,000 bill that was due on or about July 1, 2012, and had until June 30, 2013, to pay it. A second bill in the amount of \$55,000 was due for payment on July 1, 2013. The College had no funds available to pay these bills. Plaintiff told Mr. Sanchez the IT budget could not cover these bills. Mr. Sanchez said he would go to the State of New Mexico for emergency funds. Plaintiff told him that this was not likely to be successful because the State was unlikely to give funds for something that the College had mismanaged.

43. Mr. Sanchez then told Plaintiff to use funds intended for a different service to pay these bills until Mr. Sanchez could figure out how to get additional funds to cover the \$110,000. Plaintiff viewed this as a request to engage in improper conduct. He told

Mr. Sanchez that NNMC had additional vendors demanding payment and that these vendors needed to be paid with the funds that had been allocated for such payments.

44. Mr. Sanchez then said they could use state funds given for Equipment Repair and Replacement. Plaintiff's budget for Equipment Repair and Replacement was only \$70,000 for the fiscal year and if \$55,000 were taken from that budget, it would leave his department without sufficient funds for the upcoming school year to repair and replace equipment. Plaintiff told Mr. Sanchez that NNMC's IT Department could not be effectively managed if there were only \$15,000 in such funds for the year. Mr. Sanchez told Plaintiff that Plaintiff had no choice.

45. On or about June 11, 2013, Plaintiff began a series of meetings with Mr. Sanchez where he discussed his concerns about the state of financial mismanagement at the College as it related to service contracts, grant funding, and the amount of invoices the College was unable to pay. Of particular concern were the invoices coming in from Elucian for Degree Works. Mr. Sanchez had little to say other than telling Plaintiff they would "revisit" the matter at some future date.

46. During June 2013, Plaintiff spoke with Mr. Sanchez about the fact that Plaintiff had received approximately \$90,000 in invoices for payments due for another system, the Banner software system, and there were insufficient funds to pay what was owed. This system had been purchased by NNMC around 2005. The program was only 20% utilized and was costing the College around \$92,000 per year. Plaintiff told Mr. Sanchez that because the program had not been properly utilized by the Administration, NNMC had been wasting \$92,000 per year since 2005. This was due to NNMC leadership's failure to take the necessary steps to bring about full utilization, *i.e.*,

to require staff to take the training to fully utilize what the system offered.

47. Plaintiff told Mr. Sanchez that NNMC should either increase utilization of the Banner system or terminate portions of the contract, if that was possible. Mr. Sanchez told Plaintiff to keep holding off the vendors. Plaintiff told Mr. Sanchez that he was not comfortable telling the vendors anything other than the truth, and would refer the vendors to Mr. Sanchez. Plaintiff told Mr. Sanchez that he was uncomfortable with the incompetent manner in which NNMC's finances were being budgeted and handled.

48. Brenda Martinez was the Student Success Center Coordinator/Director at NNMC. Ms. Martinez worked under Dr. Steve Martinez. NNMC management had decided to fire her before the end of the 2012-13 school year. Plaintiff was highly critical of this action because of the negative impacts it was likely to have on the College student body. During June 2013, Plaintiff told Mr. Sanchez that the termination of Ms. Martinez had placed NNMC at risk because she was the only employee certified to administer GED examinations. Plaintiff told Mr. Sanchez there were strict guidelines regarding who could administer such tests, there were rules that had to be followed, and no one else at the College could do this other than Ms. Martinez. In fact, Plaintiff showed Mr. Sanchez the GED Examiner's Manual policies regarding the eligibility for GED examiners. Plaintiff requested that Ms. Martinez be kept on board. Mr. Sanchez replied that this decision had already been made and there was nothing to be done about it. Plaintiff told Mr. Sanchez that he wanted to make his position clear and to go on record with his opinion that this was a mistake that could jeopardize the students.

49. During June 2013, Mr. Sanchez told Chris Trujillo (NNMC Lead IT Specialist) and Plaintiff to configure Mr. Sanchez's desktop computer at the College so

that he could access what he called his "home network." Plaintiff questioned whether this network involved College-owned equipment and whether it was a College network. Mr. Sanchez told him: "not exactly." Mr. Sanchez said he wanted to be able to access his home computer for his private business. Mr. Sanchez had previously told Plaintiff that he was going to use a financial database that had been created for the College to help him obtain a state contract for his private business. Mr. Sanchez asked Plaintiff numerous questions about running the technology side of a business. Plaintiff made it clear to Mr. Sanchez that he believed Mr. Sanchez was seeking consultant-type information for his personal use that did not involve NNMC business and Plaintiff was not prepared to provide this information in the context of his employment with NNMC because it was for Mr. Sanchez's private benefit. In addition to the fact that he was being ordered to assist Mr. Sanchez on his private business venture, Plaintiff was concerned that allowing Mr. Sanchez to connect to the College network from a remote source (his home) without proper policies and protocols in place would provide another opportunity for the already compromised network at NNMC to be further compromised in regard to sensitive data. However, Plaintiff did as he was ordered.

50. During the first part of June 2013, Plaintiff advised Mr. Sanchez and Ms. Trujillo that NNMC was facing inventory losses in the area of \$2,000,000-\$2,500,000. A preliminary sampling of College property showed that out of 585 items only 60 items were entered into the College property-tracking system. Plaintiff advised that the College could face fines and penalties if the program managers of the various grants used to purchase equipment decided to audit the College. Mr. Sanchez was not interested in addressing this problem and attempted to deflect Plaintiff by stating that

the Administration would get around to dealing with it. Plaintiff responded by expressing his strong concern that the College was out of compliance with the requirements of various grants and that there were issues of legality, ethics and integrity involved. Plaintiff attempted to make Mr. Sanchez understand that he would have to go above Mr. Sanchez and report this serious matter if nothing were done.

V. Plaintiff's Termination from Employment by NMMC

51. During early June 2013, Plaintiff walked into his office and found NMMC employee Monique Romero holding his iPad. Ms. Romero was a close associate of Mr. Serna. Plaintiff demanded to know what she was doing with his iPad. Ms. Romero had no explanation and weakly stated she had wanted to borrow it (without his knowledge or consent). Plaintiff then asked her why she was in his office. Ms. Romero responded by saying "sorry" and then left. Shortly after this, Plaintiff observed Mr. Serna speaking with Ms. Romero.

52. On or about June 10, 2013, Plaintiff realized that his iPad was missing.

53. Plaintiff was frustrated by Mr. Sanchez's response to what Plaintiff understood was a serious problem regarding NMMC's huge inventory losses. Based on Mr. Sanchez's attitude and his prior failures to act on problems brought to his attention by Plaintiff, Plaintiff concluded that nothing was going to be done to address the issue. On June 18, 2013, Plaintiff sent a text message to State Senator Richard Martinez on his work-issued cell phone. The message stated: "We need to speak of funding concerns and ethics violations."

54. On June 21, 2013, Plaintiff noticed that his work-issued cell phone was missing. He obtained the help of a maintenance department employee to assist him in

looking for it but they could not find it. In fact, the phone was not lost but was in the possession of NNMC personnel. During the time the NNMC personnel had Plaintiff's cell phone, they read his text messages.

55. On June 24, 2013, Plaintiff arrived at work around 7:30 am and found his computer had been taken from his desk. He immediately went to Mr. Sanchez's office and found Mr. Sanchez there with Mr. Padilla. Plaintiff was told to sit down. He was handed a letter stating that he had been placed on administrative leave for the remainder of the school year and that his contract would not be renewed for the 2013-14 school year. The letter did not provide any reason for either action. At no time prior to June 24, 2013, had Mr. Sanchez, Mr. Padilla, Mr. Serna or any other NNMC official ever questioned Plaintiff about any alleged wrongful conduct or suggested that he might be terminated. Plaintiff was in a state of shock.

56. Plaintiff asked Mr. Sanchez and Mr. Padilla for the reason he had been placed on administrative leave and his contract not renewed. Plaintiff was not given any reason for either action. Mr. Sanchez stated: "I don't need to tell you anything."

57. Plaintiff was told to give his keys to Mr. Sanchez and was then subjected to the humiliation of being publicly escorted off the campus by a security guard without even having the opportunity to collect his personal belongings.

58. After Plaintiff was removed from the campus, Mr. Sanchez or another high-ranking NNMC administrative employee who had possession of Plaintiff's cell phone, gave it to another employee.

59. Under NNMC's Staff Handbook, administrative suspension/leave was a form of discipline to be used only for serious incidents of misconduct or where an

employee has previously been subjected to less severe forms of discipline. At the time Plaintiff was placed on administrative leave and told his contract would not be renewed, Plaintiff had performed his job in a highly satisfactory manner. He had not been subjected to any form of corrective discipline for any type of alleged misconduct and had not engaged in any misconduct. Moreover, NNMC policy required that an employee placed on leave for alleged misconduct be informed in writing of the reason for the adverse action. Plaintiff was not so informed. In fact, Defendant failed to follow any of its policies and procedures in regard to Plaintiff's forced leave or the non-renewal of his contract.

60. Plaintiff was placed on leave and denied re-employment despite the fact that his work performance had been excellent and despite the fact that he had not engaged in conduct which would have justified such treatment. In fact, Plaintiff was more qualified for the position from which he was terminated than the person who was hired to replace him.

61. Plaintiff was placed on administrative leave and then denied re-employment by Defendant in retaliation for his repeated communications to his public employer and/or to Senator Martinez described above in this Complaint about the actions or failures to act by NNMC administrative officials that Plaintiff believed in good faith constituted an unlawful and/or improper act. These actions were also taken by Defendant because Plaintiff objected to and/or refused to participate in activities or practices at NNMC described above in this Complaint that constituted an unlawful or improper act. Any so-called "legitimate explanation" that Defendant may proffer as to its conduct is a pretext to conceal its retaliatory animus.

62. In a further effort to retaliate against and punish Plaintiff for his protected conduct, Defendant, acting through its high-ranking administrators, has made material misrepresentations about Plaintiff's work performance to prospective employers who have inquired with NNMC about Plaintiff and have damaged Plaintiff's ability to obtain employment.

63. Defendant NNMC is liable for the acts of Mr. Sanchez, Mr. Padilla, Mr. Serna and all other NNMC administrative officials involved in the actions complained of in this Complaint.

64. The adverse actions taken against Plaintiff by Defendant were part of a pattern and practice of retaliation engaged in by Defendant, acting through Mr. Sanchez, Mr. Serna, Mr. Padilla and others, against NNMC employees who communicated to Defendant's officers and/or to third parties about acts or failures to act by Defendant that these employees believed in good faith to be improper or unlawful acts. This pattern and practice was calculated to intimidate employees and keep them from questioning improper and/or unlawful acts by the College administration and was a direct cause of the injuries suffered by Plaintiff.

65. As a direct and proximate result of the retaliatory acts of Defendant, Plaintiff Angelo Jacques suffered and continues to suffer significant economic loss of back pay and future earnings, severe emotional distress, humiliation, embarrassment, damage to his professional reputation, stress-related physical pain and suffering and medical provider bills.

VI. Jury Demand

66. Plaintiff hereby demands that his claims be heard by a six-person jury.

WHEREFORE, Plaintiff prays for the following relief against Defendant:

1. Compensatory damages in an amount to be determined by the jury against Defendant.
2. Double back pay as provided by 1978 NMSA, §10-16C-4.
3. Reinstatement to his position
4. Pre-judgment and post-judgment interest.
5. Attorneys Fees and costs as provided by 1978 NMSA, §10-16C-4.
6. Such other and further relief as the Court deems just and proper.

Respectfully Submitted,

/s/ DANIEL YOHALEM

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